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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

REPLY AND SUPPLEMENTAL BRIEF ON BEHALF OF SIDNEY ARCENEAUX

SIMON & TRICE
Attorneys at Law
1408 Pinhook Road
Post Office Box 2241
Lafayette, Louisiana

J. MINOS SIMON
Counsel for Petitioner

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The Vagrancy Statute of Louisiana Is Unconstitutional for the Additional Reason That It Violates the Eighth Amendment.

Petitioner respectfully submits that the vagrancy statute of Louisiana is unconstitutional for the additional reason that the provisions thereof operate to impose cruel and unusual punishment in violation of the provisions of the Eighth Amendment to the Constitution of the United States. As pointed out in the original brief (pp. 15-19), the Louisiana statute contemplates status criminality as distinguished from conduct criminality. Imposing punishment of fine and/or imprisonment on a citizen for occupying the status described as a vagrant amounts to cruel and unusual punishment and is proscribed by the Eighth Amendment. *Robinson* v. *California*, 270 U.S. 660 (1962).

Respondent's Contention That the Questions Before the Court Are Moot Inasmuch as Petitioner Has Pled Guilty to the Crime Charged Against Him Is Without Merit.

Respondent's contention that the questions before the Court are moot inasmuch as petitioner is no longer in the custody of State officials is without merit. Petitioner's plea of guilty to the charge against him represents but the consummate product of the relentless, illegal acts of State officials in their unabating efforts to deprive petitioner of his civil rights. The whole objective of keeping petitioner in jail in violation of his legal rights (described in his original brief, pp. 23-25) was to break down his will to resist—to extract a confession of guilt under duress. In this, they were successful. The plea of guilty obtained in the factual setting of this case is no less invalid, though more certain in its absolute effects, than the confessions obtained in *McNabb* v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 189, and *Upshaw* v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10, and, therefore, possesses no legal substance to stand as a bar to a redress of petitioner's grievances.

A concise statement of the pertinent facts surrounding petitioner's plea of guilty will give the Court an insight into the purposeful designs of the State officials involved.

It was while petitioner's application for writ of certiorari was pending before this Court and two months after service of a copy thereof had been made on the State officials, including the District Attorney, that the plea of guilty was extracted from petitioner.

Significantly, on May 30, 1962, petitioner's counsel submitted to the District Court Clerk for filing petitioner's motion for a speedy trial (Appendix "A"). On the following day, through the concerted efforts of a Deputy

Sheriff and the Assistant District Attorney, petitioner was taken from his jail cell to the City Court to plead guilty, on the promise that he would be released and restored to his freedom forthwith (Appendix "B", petitioner's affidavit). He was prohibited from using the telephone to call his counsel of record. And when the City Judge made inquiry in the presence of the Assistant District Attorney as to whether or not petitioner was represented by counsel, said official remained silent, though he had full knowledge that petitioner in fact was represented by counsel of record and had been for some time previous to the City Court appearance. Furthermore, it was the Assistant District Attorney who recommended to the City Judge that the sentence of the Court be limited to the time served by petitioner during his illegal detention. It was upon the basis of this recommendation that the City Judge ordered petitioner's release forthwith. Consequently, the District Attorney and the Sheriff fulfilled their promise to restore petitioner to his liberty if he entered a plea of guilty without the presence of his counsel. (See Appendix "C", affidavit of City Judge.) Thus, not only was petitioner's plea of guilty procured by the coercion of illegal confinement,[1] but he was deprived, by the acts of State officials, of the right to counsel, in violation of the Sixth Amendment operating through the Fourteenth Amendment to the Constitution of the United States. *Gideon* v. *Wainwright*, 83 S.Ct. 792 (1963).

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[1] In support of the State's motion to dismiss heretofore filed, the State included the affidavit of Mr. Clarence Thibodeaux, a Deputy Sheriff, in which affidavit said affiant in speaking of petitioner concerning an alleged telephone conversation petitioner had with someone at his attorney's office, deposed: "I don't know who he talked to, but he said, 'if he don't do something about it today, I will go plead guilty because *I cannot stand the jail no more*'. He hung up the phone and *I put him back in jail*."

Conclusion

It appears unthinkable that such a plea should operate to render moot the paramount questions of personal liberty presented to the Court by petitioner's application in the instant action. In fact, it seems almost incredulous that such a plea should be urged upon the Court by any responsible State official. In any event, petitioner respectfully submits the legal questions at bar are not moot, and the relief requested by petitioner should be granted.

Respectfully submitted,

SIMON & TRICE
Attorneys at Law
1408 Pinhook Road
Post Office Box 2241
Lafayette, Louisiana

By J. MINOS SIMON

APPENDIX "A"

FIFTEENTH JUDICIAL DISTRICT COURT

LAFAYETTE PARISH, LOUISIANA

Docket Number 14983

STATE OF LOUISIANA,

vs.

SIDNEY ARCENEAUX.

MOTION FOR SPEEDY TRIAL

Now, through undersigned counsel, comes Sidney Arceneaux, accused in the captioned prosecution, and respectfully avers:

1.

Accused was arrested on January 25, 1962, and has at all times since then been incarcerated in the Lafayette Parish Jail, being unable to furnish bail in the amount of $50.00.

2.

On February 27, 1962, counsel for accused presented an application for preliminary examination and, alternatively, for a writ of habeas corpus and the court signed the order granting preliminary examination, and habeas corpus hearing, both to be heard on March 8, 1962, but on said date,

the court summarily denied habeas corpus, and, upon motion of the District Attorney, continued the preliminary examination to the following day, March 9, 1962.

3.

When accused was called for preliminary examination on March 9, 1962, the District Attorney filed a document entitled "Answer," wherein he alleged that he had, on that same day, filed a bill of information charging accused with the offense of vagrancy, but making no mention of the fact, which did not become known by accused or his counsel until some weeks later, that said District Attorney had likewise filed a bill of information on the same day, charging accused with the offense of simple battery.

4.

Both said bills of information charge accused with having committed a misdemeanor, and on or about April 4, 1962, counsel for accused filed in each case a motion to quash, which was thereafter taken under advisement by the court, and neither motion has ever been decided by the court, insofar as accused and his counsel are aware.

5.

The court is scheduled to go on vacation as of the end of June, 1962, but has one more week of criminal term scheduled before that time, and accused avers on information and belief that there are presently days available during that week for the trial of accused.

6.

Under the constitution and laws of the United States and the State of Louisiana, accused is entitled to a fair and speedy trial, and if the court does not rule upon his mo-

tions to quash in time for any further necessary proceedings before the beginning of court vacation, accused will be forced to remain incarcerated for at least another four months.

7.

The failure of the court to rule upon said motions to quash has deprived and is continuing to deprive accused of his liberty in the event the court should find merit in said motions, and has prevented and is preventing the District Attorney from scheduling trial, in the event the court should overrule said motions, and said failure of the court has been and continues to be a denial to accused of his constitutional right to a fair and speedy trial.

8.

Accused desires and is entitled to have his aforesaid motions ruled upon without further delay.

WHEREFORE, it is prayed that the court rule upon the motion to quash heretofore filed in the above captioned cause, in order that accused may be granted speedy disposition of the charge against him, in accordance with the provisions of the constitutions and laws of the United States and the State of Louisiana.

SIMON & TRICE
Attorneys for Accused
301 E. Congress Street
Post Office Box 2241
Lafayette, Louisiana

By: PHIL TRICE

APPENDIX "B"

STATE OF LOUISIANA
PARISH OF LAFAYETTE

Sidney Arceneaux, being first duly sworn, did depose and say:

That while in jail under the custody and control of W. E. Harson, Sheriff of Lafayette Parish, Louisiana, during the morning of May 30, 1962, said Sheriff Harson appeared at affiant's cell in the presence of one of his deputies by the name of Thibodeaux and inquired as to how affiant was feeling. Affiant responded that he was not feeling too well. Thereupon, said Sheriff asked affiant if he was interested in getting out of jail. Affiant stated that he was. Said Sheriff then advised affiant that if he would plead guilty to the charge that was lodged against him, he could arrange it with the City Court to let him go home. Affiant requested to be released without having to plead to any charges, but the said Sheriff stated that this was not possible. Affiant advised said Sheriff that he was anxious to get out of jail and, if it were necessary to plead guilty to the charge, he would do so. Said Sheriff said he would then make the arrangement with the Judge to get him released as soon as he pled guilty.

Affiant further states that he requested permission then to talk to his counsel by telephone, but the Sheriff refused to permit him to call his attorney, J. Minos Simon. The Sheriff said that affiant had already used the telephone too often to call his attorney, as it was.

Affiant further states that the following day he was brought before the City Court at Lafayette, Louisiana. Just before leaving to go to the City Court, affiant again

requested permission of the said Sheriff to call his counsel, but again the Sheriff refused to allow him to use the telephone for that purpose.

Affiant further states that he was thereupon transported in the company of one of the deputies to the City Court at Lafayette and appeared before Honorable Kaliste Saloom, City Judge. The presiding Judge called for affiant to appear before said Court and, upon appearing, he was asked by the presiding Judge if he had a lawyer but he responded to the Judge that he had a lawyer but the Sheriff would not let him call his lawyer. The presiding Judge asked if he wanted to plead guilty, to which affiant responded that he did. The presiding Judge further inquired how long he had been in jail and he advised that he had been in jail for 4 months and 8 days, whereupon the Judge advised him that he had been in jail long enough and accordingly released him.

Immediately thereafter he was brought back to the Parish jail where he secured his belongings and left. After he left he called by telephone his counsel's office but his retained counsel, J. Minos Simon, was not in the office and he thereupon talked to counsel's secretary, advising that he had pled guilty and he was released from jail.

Affiant further states that sometime ago, not recalling exactly when, but approximately 2 or 3 or even 4 months ago said Sheriff met affiant's parents at Webb's Neighborhood Lounge in Lafayette, Louisiana, and advised affiant's parents that he, said Sheriff, wanted to talk to affiant and that said parents should tell affiant to appear at the Sheriff's office as early as possible. Shortly thereafter, affiant appeared at the office of said Sheriff, whereupon he was presented with papers that the Sheriff insisted that he sign. Affiant states that said Sheriff said that the contents of the papers that he wanted affiant to sign were such that

it would indicate to the Sheriff's deputies that they were to leave him alone and not arrest him in the future and that affiant had to sign said papers. Affiant states that he does not know how to read or write the English language and therefore does not know what the contents of said papers were, but believing the representations made by said Sheriff, affiant did sign said papers.

Further, affiant states that said Sheriff on or about June 1, 1963 appeared at the home of your affiant's parents to inquire concerning whereabouts of affiant. Affiant's parents advised said Sheriff that affiant was working with Mr. and Mrs. Elmo J. Leger, Route 1, Box 467, Duson, Louisiana. Thereafter on June 4, 1963, said Sheriff appeared at the home of Mr. and Mrs. Elmo Leger to talk to affiant. Said Sheriff did talk to affiant in the presence of Mr. Elmo Leger, at which time said Sheriff was in the company of one of his deputies. At this time the Sheriff stated to affiant that affiant should sign papers which said Sheriff wanted affiant to sign after which he wanted affiant to appear at his attorney's office at Lafayette, Louisiana, to inform said attorney that he, affiant, desired to dismiss his suit pending before the United States Supreme Court. Said Sheriff further stated that if he did not do this, then it would then become necessary for said Sheriff to again arrest affiant and for affiant again to stand trial. Affiant further states that during the course of said conversation, said Sheriff told affiant that affiant's attorney had been on his back for quite a while, and that affiant should release said attorney and discontinue his lawsuit.

This statement was signed by affiant after the same was read to him by Lorene Tylock, one of the subscribing witnesses to this document, and after having said statement read to him, he did acknowledge under oath that the same

was entirely true and correct, on this 28th of June, 1963, at Lafayette, Louisiana.

/s/ SIDNEY ARCENEAUX
Sidney Arceneaux

Witnesses:

/s/ LORENE TYLOCK

/s/ BARBARA B. SULLIVAN

/s/ J. MINOS SIMON
Notary Public

APPENDIX "C"

STATE OF LOUISIANA
PARISH OF LAFAYETTE

AFFIDAVIT

BEFORE ME, the undersigned authority in and for the State and Parish aforesaid, personally came and appeared Kaliste J. Saloom, Jr., who being first duly sworn did depose and say:

He is the Judge of the City Court of Lafayette, and was presiding in said Court on May 31, 1962. Assistant District Attorney William E. Logan presented to the Court criminal charges against Sidney J. Arceneaux of Rayne, Louisiana. The charges were transferred from the docket of the 15th Judicial District Court in and for the Parish of Lafayette, Louisiana. One charge was for the crime of vagrancy and the second charge was for commission of an act of simple battery. The accused was brought to the City Court by a Deputy Sheriff of the Parish of Lafayette. The accused was presented to the Court and asked by the presiding judge whether or not he was represented by legal counsel. The accused answered that he was not represented by legal counsel and was appearing for himself. This statement was made by the accused in the presence of the Court, the Assistant District Attorney, the Clerk and others present at the regular session of the City Court. The accused was then arraigned and entered a plea of guilty to the misdemeanor charges. On recommendation of the Assistant District Attorney and upon suggesting to the Court that the accused had been incarcerated in the Parish Jail, awaiting trial in the District Court and being unable to furnish appearance bond, for a period of four months, the sentence

of the Court, delays being duly waived, was to impose upon the accused the time served in jail awaiting his trial. The sentence having been satisfied, the accused was forthwith ordered released from custody.

A week or so later, Attorney Phil Trice of the firm of Simon & Trice called the affiant to inquire as to the Arceneaux cases and asked if affiant had been informed that the firm of Simon & Trice was employed to represent him, to which inquiry affiant replied that he was not so informed at the time of arraignment and sentence.

Since several months have passed, affiant does not recall minutely all of the details and persons present at the court session.

/s/ KALISTE J. SALOOM, JR.
Kaliste J. Saloom, Jr.

Sworn to and subscribed before me
this 7th day of March, 1963.

/s/ LEORA D. FUSEBER
Notary Public